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## Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Tennessee Room
Address 2:	220 French Landing Drive, 1-A
City:	Nashville, TN
Zip:	37243
Hearing Date :	06/08/2017
Hearing Time:	10:45 a.m. <input checked="" type="checkbox"/> _X_ CST/CDT <input type="checkbox"/> __ EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

☒ Amendment  
☐ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-19	Inpatient Hospital Fee Schedule
Rule Number	Rule Title
0800-02-19-.01	General Rules

0800-02-19-.02	Definitions
0800-02-19-.03	Special Ground Rules – Inpatient Hospital Services
0800-02-19-.04	Pre-admission Utilization Review
0800-02-19-.05	Other Services
0800-02-19-.06	Penalties for Violations of Fee Schedules

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

#### **0800-02-19-.01 GENERAL RULES.**

- (1) These In-patient Hospital Fee Schedule Rules are applicable to all in-patient services as defined herein. These include medical, surgical, rehabilitation, and/or psychiatric services rendered in a hospital to injured or ill workers claiming medical benefits pursuant to the Tennessee Workers' Compensation Act. Maximum fees for outpatient hospital services are not addressed in these In-patient Hospital Fee Schedule Rules, but are addressed in Rule 0800-02-18-.07 of the Medical Fee Schedule Rules, Chapter 0800-02-18-.01 et seq. These In-patient Hospital Fee Schedule Rules are established pursuant to Tenn. Code Ann. § 50-6-204. They must be used in conjunction with the Rules for Medical Payments, Chapter 0800-02-17-.01 et seq., and the Medical Fee Schedule Rules, Chapter 0800-02-18-.01 et seq., as the definitions and provisions set forth in those rules are incorporated as if set forth fully herein. Providers rendering medically appropriate care outside of the state of Tennessee to an injured employee pursuant to the Tennessee Workers' Compensation Act may be paid in accordance with the medical fee schedule, law, and rules governing in the jurisdiction where such medically appropriate care is provided.
- (2) General Information
  - (a) Reimbursements shall be determined for services rendered in accordance with these Fee Schedule Rules and shall be considered to be inclusive unless otherwise expressly noted in these Rules.
  - (b) The most recent Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and shall be effective upon adoption and implementation by the CMS. All such Medicare procedures and guidelines are applicable unless these Rules set forth a different procedure or guideline. Whenever there is no specific maximum fee or methodology for reimbursement set forth in these Rules for a service, diagnostic procedure, equipment, etc., then the maximum amount of reimbursement shall be 100% of the most recent and effective Medicare allowable amount and the most recent effective Medicare guidelines and procedures shall be followed in arriving at the correct amount. Whenever there is no applicable Medicare code, the service, equipment, diagnostic procedure, etc. shall be reimbursed up to a maximum of the usual and customary amount, as defined in Rule 0800-02-17-.03. All Medicare rules shall be applied that are effective on the date of service or the date of discharge in accordance with Medicare guidelines.
  - (c) Reimbursement for a compensable workers' compensation claim shall be the lesser of the hospital's usual and customary charges or the maximum amount allowed under this In-patient Hospital Fee Schedule.
  - (d) In-patient hospitals shall be grouped into the following separate peer groupings:
    1. Peer Group 1 Hospitals;
    2. Peer Group 2 Rehabilitation Hospitals;

3. Peer Group 3 Psychiatric Hospitals;
  4. Peer Group 4 Designated Level 1 Trauma Centers.
- (e) For each inpatient claim submitted, the provider shall assign a Medicare Diagnosis Related Group ("MS-DRG") code which appropriately reflects the patient's primary cause of hospitalization.
  - (f) Prospective utilization review is required for non-emergent, non-urgent inpatient services. Emergency or urgent admissions require utilization review to begin within one (1) business day of the employer receiving notification of the admission.

**Authority:** T.C.A. §§ 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005). **Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006.

#### **0800-02-19-.02 DEFINITIONS.**

- (1) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation of the Tennessee Department of Labor and Workforce Development or the Administrator's designee.
- (2) "Allowed Charges" or "Allowable Charges" shall mean charges as prescribed in the Bureau's Rules, or as determined by the Administrator or the Administrator's designee after consultation with the Bureau's Medical Director.
- (3) "Bureau" means the Tennessee Bureau of Workers' Compensation.
- (4) "MS-DRG" – Medicare classifications of diagnosis in which patients demonstrate similar resource consumption and length of stay patterns.
- (5) "Hospital" is the same as the definition for Medicare.
- (6) "In-patient Services" - services rendered to a person who is formally admitted to a hospital and whose length of stay as defined by Medicare:
  - (a) Is expected to include at least two midnights, or;
  - (b) The medical record supports the admitting physician's determination that the patient requires inpatient care despite the lack of a two midnight length of stay, or;
  - (c) The procedure/treatment is included on the "in-patient only" list.
- (7) "Institutional Services" - all non-physician services rendered within the institution by an agent of the institution.
- (8) "Length of Stay" ("LOS") - number of days of admission where patient appears on midnight census. Last day of stay shall count as an admission day if it is medically necessary for the patient to remain in the hospital beyond 12:00 noon as defined by Medicare.
- (9) "Medical Admission" - any hospital admission where the primary services rendered are not surgical, or in a psychiatric, or rehabilitation hospital, or in a specially designated psychiatric or rehabilitation unit within an acute care hospital.
- (10) "Stop-Loss Payment" ("SLP") - an independent method of payment for an unusually costly or lengthy stay.

- (11) "Stop-Loss Reimbursement Factor" ("SLRF") - a factor established by the Division to be used as a multiplier to establish a reimbursement amount when total hospital charges have exceeded specific stop-loss thresholds.
- (12) "Stop-Loss Threshold" ("SLT") - threshold of total charges established by the Bureau, beyond which reimbursement is calculated by multiplying the applicable Stop-Loss Reimbursement Factor times the total charges identifying that particular threshold.
- (13) "Surgical Admission" - any hospital admission where the patient has an assigned surgical MS-DRG as defined by the Medicare.
- (14) "Transfers between Facilities" - to move or remove a patient from one facility to another for a purpose related to obtaining or continuing medical care. This may or may not involve a change in the admittance status of the patient, i.e. patient transported from one facility to another to obtain specific care, diagnostic testing, or other medical services not available in facility in which patient has been admitted. This includes costs related to transportation of patient to obtain medical care.
- (15) "Trauma Admission" – means:
  - (a) Any level 1 trauma center hospital admission in which the patient has an ICD-9 diagnosis code of 800 to 959.99, or ICD-10 code that is (or includes) S00.00XA through S99.99XX, T07, T14 to T32, T79 and the claim includes an ICU revenue code of 020x or a CCU revenue code of 021x, or
  - (b) Any level 1 trauma center hospital admission for any diagnosis with a trauma response revenue code of 068x and/or type of admission code, "5."

Note: this includes all hospital days that qualify as an inpatient day as defined under inpatient services.
- (16) "Usual and Customary Charge" means eighty percent (80%) of a specific provider's average charges to all payers for the same procedure.
- (17) "Utilization Review" for workers' compensation claims means evaluation of the necessity, appropriateness, efficiency and quality of medical care services provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of the medical care services provided; provided, that "utilization review" does not include the establishment of approved payment levels or a review of medical charges or fees.
- (18) "Workers' Compensation Standard Per Diem Amount" ("SPDA") - A standardized per diem amount established for the reimbursement of hospitals for services rendered.

**Authority:** T.C.A. §§ 50-6-102, 50-6-125, 50-6-128, 50-6-204, 50-6-205 (Repl. 2005), 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006. Amendment filed June 12, 2009; effective August 26, 2009. Amendment filed December 26, 2013; effective March 26, 2014.

#### **0800-02-19-.03 SPECIAL GROUND RULES – INPATIENT HOSPITAL SERVICES.**

- (1) This section defines the reimbursement procedures and calculations for inpatient health care

services by all hospitals. Hospital reimbursement is divided into four (4) groups based on type of admission:

(a) Peer Groups:

1. Peer Group 1-surgical or non-surgical (medical);
2. Peer Group 2-rehabilitation;
3. Peer Group 3-psychiatric;
4. Peer Group 4-trauma, level 1 and:

(b) Length of stay (less than eight (8) days/over seven (7) days).

(2) General Information, Payments

For each inpatient claim submitted, the provider shall assign a Diagnosis Related Group (MS-DRG) code which appropriately reflects the patient's primary cause for hospitalization to determine average length of stay and for tracking purposes. Hospitals within each peer group are to be paid the maximum amount per inpatient day unless a contracted rate is less. An additional payment will be due if the total bill for the hospitalization exceeds the stop loss threshold as defined below.

(a) The maximum per diem rates to be used in calculating the reimbursement rate is as follows:

1. Peer Group 1 \$2,235.00 (surgical admission) daily for the first seven (7) days;

\$1,935.00 (surgical admission) per day for the 8<sup>th</sup> day and thereafter;

Note: these rates include Intensive Care (ICU) & Critical and Cardiac Care (CCU) if not a trauma admission as defined above.

\$1,840.00 (medical admission) daily for first seven (7) days;

\$1,590.00 (medical admission) per day for the 8<sup>th</sup> day and thereafter;

Note: these rates include Intensive Care (ICU) & Critical and Cardiac Care (CCU).

2. Peer Group 2 (Rehabilitation) \$1,090.00 for the first seven (7) days and 890.00 per day thereafter;

3. Peer Group 3 (Psychiatric) \$790.00 per day (applicable also to chemical dependency);

4. Peer Group 4 (Trauma level 1) All trauma care at any licensed Level 1 Trauma Center only shall be reimbursed at a maximum rate of \$4,500.00 per day

for each day of the patient's admission as defined in 0800-02-18-.02 (16).

- (c) Surgical implants shall be reimbursed separately and in addition to the per diem hospital charges.
  - (d) Reimbursement for trauma inpatient hospital services shall be limited to the lesser of the maximum allowable as calculated by the appropriate per diem rate, or the hospital's billed charges minus any non-covered charges. Non-covered charges are convenience items or charges for services not related to the work injury/illness.
  - (e) Additional reimbursement may be made in addition to the per diem for implantables (i.e. rods, pins, plates and joint replacements, etc.). Reimbursement for implantables is limited to a maximum of the hospital's cost plus fifteen percent (15%)-capped at one thousand dollars (\$1000.00)-of the invoice amount. This is applicable per item, and is not cumulative. Implantables shall be billed using the appropriate HCPCS codes, when available. Billing for implantables shall be accompanied by an invoice if requested by the payer.
  - (f) The following items are not included in the per diem reimbursement to the facility and may be reimbursed separately. All of these items must be listed with the applicable CPT/HCPCS.
    - 1. Durable Medical Equipment;
    - 2. Orthotics and Prosthetics;
    - 3. Implantables;
    - 4. Ambulance Services;
    - 5. Take home medications and supplies.
  - (g) The items listed in subsection (d) (4) shall be reimbursed according to the Rules for Medical Payments (Chapter 0800-02-17, and the Medical Fee Schedule Rules (Chapter 0800-02-18) payment limits. Refer to the maximum rates set forth in Rule 0800-02-18-.02 for practitioner fees. Items not listed in the Rules shall be reimbursed at the usual and customary rate as defined in Rule 0800-02-17-.03, unless otherwise indicated herein.
  - (h) Per-diem rates are all inclusive (with the exception of those items listed in subsection (f) above).
  - (i) The In-patient Hospital Fee Schedule allows for independent reimbursement on a case-by-case basis if the particular care exceeds the Stop-Loss Threshold.
  - (j) Payments for implantables shall be made only to the facility and not to a supplier or distributor.
- (3) Reimbursement Calculations
- (a) Explanation
    - 1. Each admission is assigned an appropriate MS-DRG.
    - 2. The applicable Standard Per Diem Amount ("SPDA") is multiplied by the length of stay ("LOS") for that admission plus items listed under (f):

Formula: (LOS) X (SPDA) + (items listed under (f) above) = WCRA

3. The Workers' Compensation Reimbursement Amount ("WCRA") is the total amount of reimbursement to be made for that particular admission and may include a stop loss payment ("SLP") as calculated below.

(4) Stop-Loss Method

- (a) Stop-loss is an independent reimbursement factor established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker. This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.

(b) Explanation

1. To be eligible for stop loss payment, the total Allowed Charges for a hospital admission must exceed the hospital maximum payment, as determined by the hospital maximum payment rate per day, by at least \$20,750 for Non-Trauma Admissions and \$30,000.00 for Trauma Admissions. This does not include amounts for items set forth in rule 0800-02-19-.03 (f), such as implantables, DME, etc., which shall not be included in determining the total Allowed Charges for stop-loss calculations.
2. Once the allowed charges reach the stop-loss threshold, reimbursement for all additional charges shall be made based on a stop-loss payment factor of 80%.
3. The additional charges are multiplied by the Stop-Loss Reimbursement Factor (SLRF) and added to the maximum allowable payment.

- (c) Formula: (LOS) x (SPDA) + (Items listed under (f)) + (Additional Charges x SLRF) = WCRA

(5) Billing for In-patient Admissions

- (a) All bills for in-patient institutional services shall be submitted on the standard billing form or any revision to that form approved for use by the Medicare.

**Authority:** T.C.A. §§ 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005). **Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006. Amendment filed June 12, 2009; effective August 26, 2009. Amendments filed March 12, 2012; to have been effective June 10, 2012. The Government Operations Committee filed a stay on May 7, 2012; new effective date August 9, 2012.

**0800-02-19-.04 PRE-ADMISSION UTILIZATION REVIEW.**

Utilization review shall be performed in accordance with Chapter 0800-02-06.

**Authority:** T.C.A. §§ 50-6-124, 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005). **Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006. Amendment filed June 12, 2009; effective August 26, 2009.

**0800-02-19-.05 OTHER SERVICES.**

(1) Pharmacy Services

- (a) Pharmaceutical services rendered as part of in-patient care are considered inclusive within the In-patient Fee Schedule and shall not be reimbursed separately.
- (b) All retail pharmaceutical services rendered shall be reimbursed in accordance with the Pharmacy Schedule Guidelines, Rule 0800-02-18-.12.

(2) Professional Services

- (a) All non-institutional professional and technical services will be reimbursed in accordance with the Bureau's Rules for Medical Payments and the Medical Fee Schedule Rules which must be used in conjunction with these Rules.

**Authority:** T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005).

**Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006. Amendment filed June 12, 2009; effective August 26, 2009.

**0800-02-19-.06 PENALTIES FOR VIOLATIONS OF FEE SCHEDULES.**

- (1) Except when a waiver is granted by the Bureau, providers shall not accept and employers shall not pay any amount for health care services provided for the treatment of a covered injury or illness or for any other services encompassed within the Rules for Medical Payments, Medical Fee Schedule Rules or the In-patient Hospital Fee Schedule Rules, when that amount exceeds the maximum allowable payment established by these Rules. Any provider accepting and any employer paying an amount in excess of the Rules shall be in violation of the Rules and may, at the Administrator's discretion, be subject to civil penalties of up to one thousand dollars (\$1,000.00) per violation for each violation, which may be assessed severally against the provider accepting such fee and the employer paying the excessive fee, whenever a pattern or practice of such activity is found. At the discretion of the Administrator, the Administrator's Designee, or an agency member appointed by the Administrator, such provider may also be reported to the appropriate certifying board, and may be subject to exclusion from participating in providing care under the Act. Other violations of the Rules for Medical Payments, Medical Fee Schedule Rules, or the In-patient Hospital Fee Schedule Rules may subject the alleged violator(s) to a civil penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation, at the discretion of the Administrator, the Administrator's Designee, or an agency member appointed by the Administrator.
- (2) Any provider reimbursed or carrier paying an amount which is in excess of these Rules shall have a period of one hundred eighty (180) calendar days from the time of receipt/payment of such excessive payment in which to refund/recover the overpayment amount. Overpayments refunded/recovered within this time period shall not constitute a violation under these Rules.
- (3) A provider, employer or carrier found to be in violation of these Rules, whether a civil penalty is assessed or not, may request a contested case hearing by requesting such hearing in writing within fifteen (15) calendar days of issuance of a Notice of Violation and, if applicable, the notice of assessment of civil penalties. All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., are applicable under these Rules, including, but not limited to, the right to judicial review of any final departmental decision.
- (4) The request for a hearing shall be made to the Bureau in writing by an employer, carrier or provider which has been notified of its violation of these Rules, and if applicable, assessed a civil

penalty.

- (5) Any request for a hearing shall be filed with the Bureau within fifteen (15) calendar days of the date of issuance of the Notice of Violation and, if applicable, of civil penalty. Failure to file a request for a hearing within fifteen (15) calendar days of the date of issuance of a Notice of Violation shall result in the decision of the Administrator, Administrator's Designee, or an agency member appointed by the Administrator becoming a final order and not subject to further review.
- (6) The Administrator or the Administrator's Designee, shall have the authority to hear the matter as a contested case and determine if any civil penalty assessed should have been assessed. All procedural aspects set forth in the Bureau's Penalty Program Rules, Chapter 0800-02-13, shall apply and be followed in any such contested case hearing.
- (7) Upon receipt of a timely filed request for a hearing, the Administrator shall issue a Notice of Hearing to all interested parties.

**Authority:** T.C.A. §§ 50-6-102, 50-6-125, 50-6-128, 50-6-204, 50-6-205, 50-6-233 (Repl. 2005), and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 5, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed February 3, 2006; effective April 19, 2006. Amendment filed June 12, 2009; effective August 26, 2009. Amendment filed December 26, 2013; effective March 26, 2014.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: April 13, 2017

Signature: Abbie Hodgson

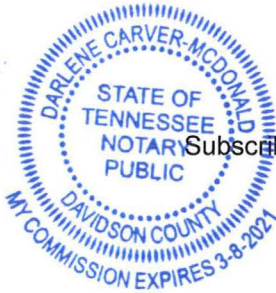
Name of Officer: Abbie Hodgson

Title of Officer: Administrator, Bureau of Workers' Compensation

Subscribed and sworn to before me on: April 13, 2017

Notary Public Signature: Darlene Carver-McDonald

My commission expires on: March 8, 2021



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Filed with the Department of State on: 4/13/17

Tre Hargett  
Tre Hargett  
Secretary of State

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